

The Solicitors' Journal

VOL. 90

Saturday, April 27, 1946

No. 17

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CURRENT TOPICS

Expedition in the King's Bench

A STATEMENT by the LORD CHIEF JUSTICE on 16th April as to the condition of the lists in the King's Bench Division drew public attention to the fact that so far as that division was concerned, the law's delays do not exist at the present time. He said that every case in the printed lists published at the beginning of the term had been disposed of. That was not to say that a certain number of cases were not standing over because the parties were not ready or for their convenience, but apart from that every case had been dealt with. They had been trying cases which had been set down on 24th and 25th January. The actual number of cases heard was 521, against 429 set down, and for the first time for a very long period London litigants were getting their cases heard as quickly as cases heard at Assizes. With regard to the Divisional Court list, every case appearing in it at the beginning of the sittings had been disposed of, and last week they were hearing cases which had been set down since the sittings began. With the greatest respect to LORD GODDARD, it should be said that there is a danger of complacency in over-emphasising the present expeditious handling of cases. Business in the King's Bench Division is still a fraction of its pre-war volume, and it would be astonishing if there were any arrears. While granting that some judges and barristers have attained the difficult virtue of conciseness, we can yet foresee a time when arrears in the King's Bench Division will again become a problem, for which the mere appointment of more judges will be an inadequate remedy.

Conveyancing and Registration

It is probably understood by the more intelligent sections of the public that solicitors as a class are not overpaid, and that it can well be argued that they are underpaid. Nevertheless, there are always a few who feel inclined to express their discontent. One of the most frequent occasions for such an expression of opinion is that in relation to the conveyance of land, and there is sometimes an innuendo that solicitors grow wealthy on such business. What the captious critic refuses to understand is that in a solicitor's work, as in every other kind of work that exists, there are swings and roundabouts, and even if it were true that conveyancing is highly profitable, the salaries demanded by shorthand typists, increased rentals for business premises, and the general increase of all overhead expenses swallow up this small contribution to the heavy expense of carrying on practice. A more intelligent and constructive point of view is that held by a tiny but increasing section of the public who consider that benefits in cheaper and more expeditious conveyancing would accrue from a system of compulsory registration.

MR. H. W. GROVES, writing to the *Newcastle Daily Journal* of 26th March, referred in this connection to a resolution recently passed by the Newcastle Incorporated Law Society compelling all members to charge the full scale for conveyances of land in their district, and "rendering any solicitor who charges less than the full scale liable to disciplinary proceedings under the Solicitors Acts." He wrote: "Land Registration, under which only a nominal fee of a pound or two is charged, has been in force in our Colonies for some years and operates in some counties in the South of England." This statement, as Mr. HUGH PYBUS, honorary secretary of the Newcastle-upon-Tyne Incorporated Law Society, pointed out in a reply published in the *Newcastle Daily Journal* of 28th March, is misleading, and refers only to the Registry fees and not to legal costs, which are additional. Mr. Groves continued: "If sufficient representation is made from any given area through Members of Parliament the system can be introduced to cover any district. Any interested persons therefore should write to their M.P.s on the subject." In fact, any landowner anywhere may try the experiment of transferring his land by a registered disposition. Compulsory registration is introduced into an area either at the instance of the County Council (Land Transfer Act, 1897), or without such instance, by the Lord Chancellor after 1935 (Land Registration Act, 1925, ss. 120 and 121). However, having regard to delays at the Land Registry, the present time might well be deemed inopportune for experiment.

Housekeeping Savings

THE rights and wrongs of the present state of the law, under which a wife's savings from housekeeping money handed to her by her husband continue to belong to her husband, were illustrated in a vivid form in the county court case of *Shrapnel v. Shrapnel*, decided by His Honour Judge KIRKHOUSE JENKINS, at Melksham (Wilts.) County Court, on 13th April. His Honour decided that furniture, including a tea-service which the wife had got by paying a shilling a week into a club, and a cutlery set which she got for coupons given with packets of tea, belonged to her husband. The decision is inequitable, and as the learned judge recognised, "not in keeping with the modern outlook as to the status of a married woman," but, as he also pointed out, judges are not appointed to express an opinion on such matters, but to administer the law and to do what the law tells him to do. *Absolutur ambulando*, but one may easily guess the feelings of judges at having to administer such an out-of-date law. The parties in that case had been married twenty-one years, and without any doubt in such cases strenuous efforts

at economy, often solely on the part of the wife, go towards the purchase of the goods and chattels that compose the home. Whatever may have been achieved by the passing of the Married Women's Property Acts, 1882-1913, the fact undoubtedly remains that those who framed those Acts omitted to consider the source from which a married woman was to obtain her property, and they thereby unconsciously favoured heiresses and married women with careers, as against those who followed the highest of all careers, namely, the creation and rearing of a family. This sordid and barbarous state of the law, which in sentiment is in arrear even of the ancient method of providing pin money in a marriage settlement, should be amended at the earliest possible date, in the interests of the maintenance of the institution of marriage and the encouragement of family life.

Patent Law Reform

A SOMEWHAT controversial proposal is put forward in the second interim report of the Departmental Committee on the Patents and Designs Acts which was published on 11th April (Cmd. 6789). It recommends as a remedy for the high cost of patent litigation the appointment of two special judges with the technical or scientific qualifications necessary for the trial of patent actions. The report refers to the feeling that judges have not "the necessary scientific knowledge or experience to assess the value of expert evidence, or arrive at sound conclusions where the invention in question involves the discussion of highly complex chemical, electrical, mechanical or physical matters." A subsidiary recommendation of the committee is that a scientific assistant should sit with the judge unless his assistance is deemed unnecessary. To save time and expense, it is said, the technical aspects of a case should be studied before the hearing of the case, with the help of the scientific assistant. Another suggested experiment is to give the Comptroller jurisdiction to try cases of alleged infringement where the parties consent. It is doubtful whether these proposals will appeal to those who deplore the present tendency to exalt the expert into a judge. Many lawyers and laymen still feel that the old-fashioned suspicion of the expert as one who knows less and less about more and more as well as more and more about less and less was healthy and had a substantial foundation. Where the sole issue is purely scientific and cannot possibly be understood by a non-expert judge, it can always be referred to an expert. The committee has decided against changing the patent law by making virtually all patents subject to compulsory licences of right after a short period, but under a proposed amendment of s. 27 of the Act, applicants for licences of right would have more opportunity to get them. It is also proposed, by a majority of eight to two, that the Comptroller be empowered to refuse the grant of a patent on grounds of lack of subject-matter.

Building Licences: Penalties

STUDENTS of Parliament have observed that from time to time lawyer Members, who constitute a substantial proportion of the present House of Commons, are given a field day, or at any rate an hour or two in which they can discuss subjects of interest to them. Two hours were spent on 16th April in discussing a motion by Mr. J. S. C. REID that the Order in Council dated 20th March, 1946, amending reg. 56A of the Defence (General) Regulations, 1939, and the Defence (Recovery of Fines) Regulations, 1942, be annulled. Mr. Reid took no objection to the raising of the maximum penalties* but he asked the Attorney-General whether he considered it a good thing to raise the penalty on summary conviction to twelve months, and drew attention to the innovation in para. 6B, providing for a minimum amount of fine. The only precedent for that was, he said, the black market minimum penalty, being the profit involved in the offence, which was proved in the course of the case. Here it was £50 on summary conviction and £500 on indictment. The enactment of the minimum was an encroachment by the executive on the judiciary. The exception of special circumstances, Mr. Reid said, had caused difficulty to the

courts in relation to the suspension of motor licences, and would cause more difficulty here. Mr. Boyd-Carpenter objected to the provision giving the Minister the right to direct that a case be not tried by the magistrates but be sent for trial on indictment. Mr. Weitzman pointed out that where the Minister directs that a case should be sent for trial on indictment there would be no power to give costs to an innocent person, and, there being no time limit for bringing in an indictment, as there was in regard to summary proceedings, the result would be to give a premium for delay. Mr. Maude spoke from experience as to the tendency to delay and its serious consequences, and also supported the argument against a minimum penalty. The Parliamentary Secretary to the Ministry of Works spoke in reply of "a large and most malignant black market in unessential building," but one cannot help feeling that there was more to be said for Mr. Reid's rejoinder, that it was 200 years ago that it was thought that if penalties were increased that decreased crime. The right way, he said, was to catch more offenders. We are inclined to agree.

Recent Decisions

In *Johns v. Fellowes*, on 15th April, HALLETT, J., considered a case where a solicitor acting for a husband in divorce proceedings against his wife wrote to her solicitor: "During the course of my investigations into this matter it transpires that your client is not the lawful wife of my client. It also seems that your client is well aware of this position..." and the defendant pleaded that he wrote the letter on information supplied by the husband and in good faith and in the honest defence of the husband's interests, in the course of his duty as solicitor. Hallett, J., giving judgment for the defendant, said that it was established during the hearing of the petition that the plaintiff was not Johns' lawful wife and the petition was dismissed. As regards that part of the defendant's letter, it was not challenged; the basis of the action was the statement that the plaintiff knew of the position. It was conceded that the defendant wrote the letter on a privileged occasion and to succeed plaintiff had to prove that he had some indirect motive—that it was not written honestly in defence of his client's interest. Plaintiff had failed to satisfy his lordship of that, but he thought that defendant ought not to have included the statement in his letter. He had brought the action upon himself and there would be judgment for him without costs.

In *In re Mowsley (No. 1. Compulsory Purchase Order, 1944)*, on 15th April (*The Times*, 16th April), CHARLES, J., held in a case in which a local council had served a notice that they proposed to acquire certain land for housing, that although the Minister had a discretion under the Housing (Temporary Provisions) Act, 1944, to decide whether there should be a local inquiry, the Minister must nevertheless act in accordance with the principles of justice, and having taken a statement from the council, he should have given the applicant an opportunity of correcting or explaining the council's statements. The order of the Minister for the compulsory purchase of the land was therefore bad and must be quashed.

In *Weatherley v. Weatherley*, on 16th April (*The Times*, 17th April), the Court of Appeal (SCOTT and TUCKER, L.J.J., and EVERSHED, J.) held by a majority, Scott, L.J., dissenting, that mere refusal of further sexual intercourse was not enough to constitute desertion. Scott, L.J., was of the opinion that "the right of each spouse to the co-operation of the other in normal marital intercourse for the procreation of children occupies so important a place in the totality of the marriage relationship that a definite and unqualified refusal, expressed and intended to be permanent, constitutes desertion."

In *The Tolten*, on 16th April (*The Times*, 17th April), the Court of Appeal (SCOTT, SOMERVELL and COHEN, L.J.J.) held that the Admiralty Division of the High Court had jurisdiction to entertain an action *in rem* against a British ship which came into collision with a wharf in a foreign harbour with resultant damage to the harbour.

COMPANY LAW AND PRACTICE

RETIREMENT AND RE-ELECTION OF DIRECTORS

ARTICLES of association almost invariably contain provisions for the retirement annually of a specified number of the directors from those who have been longest in office, and for the offices so vacated to be filled by resolution of the shareholders, the retiring directors being made eligible for re-election. These operations—the retirement and the election of directors to fill vacancies so created—are most commonly to be carried out at the company's annual general meeting. Then it is not unusual to find an article in the form or on the lines of cl. 82 of the 1908 Table A, which runs as follows: "If at any meeting at which an election of directors ought to take place, the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place, and, if at the adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall be deemed to have been re-elected at the adjourned meeting." The corresponding clause of the 1929 Table A is, as we shall see, rather simpler as it dispenses with the requirement of an adjourned meeting.

These provisions, at least on a first reading, seem straightforward and comprehensive enough, but a glance at the cases shows that they may not always work out in application—not because of any defect in the provisions so much as because the company has chosen to deviate from the path of procedure laid down by the articles and ends up in the position where only the court can say who has and who has not been elected in the place of a retiring director. In perhaps the earliest reported case on the subject—*Re Great Northern Salt & Chemical Works*, 44 Ch. D. 472—the provisions of the articles were not strictly adhered to by the company: what happened—I am simplifying the facts a good deal—was that at the ordinary general meeting at which the directors retired, the shareholders did not formerly re-elect them or appoint other directors in their place. There was an article in the terms of cl. 82 of the 1908 Table A, and, accordingly the meeting should have stood adjourned for a week and the matter dealt with at the adjourned meeting. In fact, no adjourned meeting took place. It was argued, therefore, that the retiring directors had gone and had not been validly replaced: but, in his judgment, Stirling, J., said that the provision for holding an adjourned meeting was directory only and that the meaning was this—if for any reason, either the first meeting or the adjourned meeting at which the election of directors ought to take place does not proceed validly to fill up the places of the vacating directors, then they are to continue in office.

In that case, then, the omission to follow the procedure laid down by the articles left the retiring directors in office. But a different result follows if the directors fail to convene the ordinary general meeting at which they are due to retire: if the year elapses and the ordinary general meeting has not been held, the directors vacate office on the last day of the year and cannot claim that they must be deemed to have been re-elected when it is due to their own default that the meeting was not convened: see *Re Consolidated Nickel Mines, Ltd.* [1914] 1 Ch. 883.

The next case to which I want to refer is *Spencer v. Kennedy* [1926] Ch. 125. There, cl. 82 of the 1908 Table A applied to the company, and what happened was this: under the articles a director was due to retire by rotation at the annual general meeting which had been convened for a Wednesday and part of the business included in the notice convening the meeting was the election of a director in his place. At the meeting it was proposed that the retiring director be re-elected: the matter was discussed but not finally dealt with and the meeting was adjourned successively to the following Thursday, Saturday and Tuesday. At the meeting held on the Tuesday, the original motion to re-elect the retiring director was put and lost and another shareholder was

proposed and elected in his place. Not unnaturally, it was contended that all this was a nullity: that as the retiring director was neither re-elected nor replaced at the general meeting on the Wednesday, cl. 82 of Table A should have been observed and the meeting adjourned till the following Wednesday: and as this was not done, then, following the decision in *Re Great Northern Salt & Chemical Works*, *supra*, the retiring director must be deemed to have been re-elected. Astbury, J., held that this was not so: the adjourned meeting held on the Tuesday was a continuation of the original meeting at which the re-election resolution was proposed, so that, in effect, what was done at the adjourned meeting was as valid as if it had been done at the original meeting and the retiring director was accordingly not to be deemed re-elected.

In the course of his judgment, Astbury, J., said: "If the [original] meeting had not been adjourned or if the question of . . . retirement or replacement had been entirely lost sight of, Article 82 would have applied and it would have been the directors' duty to adjourn the meeting to [the following Wednesday]." This dictum is reproduced in the headnote to the case in this form: "*Semble*. Article 82 only applies to a case where the retirement of a director by rotation and the necessity for his re-election or replacement is entirely lost sight of at the annual meeting." The accuracy of this *semble* was queried by Maugham, J. (as he then was), in the next case to which I refer and can no longer be relied upon.

The decision in *Spencer v. Kennedy* gave effect to the expressed wishes of the shareholders as to whether or not the retiring director should continue in office: but in *Holt v. Catterall* (1931), 47 T.L.R. 332, the effect of the relevant article was to nullify the resolution of the general meeting not to re-elect the retiring director, simply because the meeting did not proceed to elect another director in his place. The article there did not provide for the matter to be decided at an adjourned meeting but was in these terms: "If at any meeting at which an election of directors ought to take place, the places of the retiring directors or some of them are not filled up, then . . . the retiring directors, or such of them as have not had their places filled up and may be willing to act, shall be deemed to have been re-elected." What happened was that at the general meeting a director retired by rotation and a motion was proposed for his re-election: this was defeated but nobody was elected in his place. The result was that, despite the express resolution of the shareholders to the contrary, he must, by reason of the provisions of the article, be deemed to have been re-elected: and it was so held by Maugham, J. It logically followed that the later appointment by the board of another director to fill the vacancy was abortive because there was no vacancy. After referring, with doubt, to the *semble* in the headnote to *Spencer v. Kennedy*, the learned judge said that in the case before him the article could not be cut down and made to apply only to the case of complete inadvertence of the members of the company present at the meeting.

The shareholders in this case were certainly not inadvertent on the question of re-electing the retiring director: they defeated a resolution to this effect and must have been surprised that, in the result, the man they had turned down was deemed to have been re-elected, because they had not proceeded to fill his place. The facts in the recent case of *Robert Batcheller & Sons, Ltd. v. Batcheller* [1945] Ch. 169, happily enabled this rather disconcerting outcome to be avoided. The article there was substantially the same as in *Holt v. Catterall*, and at the annual general meeting, two retiring directors were, on a show of hands, not re-elected. A poll having been demanded, it was decided that the poll should be held at a later date and that an item providing for the election of two directors to fill the vacancies should also be dealt with at the later meeting. The retiring directors failed to secure re-election at the later meeting and the shareholders purported to elect the two proposed new directors

to fill the vacancies. The notice convening the adjourned meeting was—as to the resolution appointing the two new directors—defective and the court held that their purported election was of no effect: it had then to consider the claim of the retiring directors that in consequence they must be deemed, under the article, to have been re-elected. *Romer, J.*, after referring to *Spencer v. Kennedy* and *Holt v. Catterall*, and accepting, in view of *Maugham, J.*'s remarks in the latter case, that the operation of the article could not be confined to cases of accidental omission to fill the places of retiring directors, said that, in his opinion, the article “only operates when the known circumstances of a particular case are such as sensibly and legitimately to admit of its application. It is, of course, quite permissible to ‘deem’ a thing to have happened when it is not known whether it happened or not. It is an unusual, but not an impossible conception, to ‘deem’ that a thing happened when it is known positively that it did not happen. To deem, however, that a thing happened when not only is it known that it did not happen, but it is positively known that precisely the opposite of it happened, is a conception which, to my mind, if applied to a subject-matter such as that of [this article], amounts to a complete absurdity.” It would be absurd to hold that the retiring directors must be deemed to have been re-elected when the majority of shareholders had not only explicitly refused to re-elect them, but had avowedly desired (though their avowed desire had not been given technically effective form)

to appoint two other persons in their place. “Articles of association are for the use of business men and are not lightly to be construed, if any other interpretation be fairly permissible, in such a way as to lead to absurdity.”

There can be little doubt that, should similar cases arise, the court would strive to reach an equally sensible and satisfactory solution and to avoid a narrow, formalistic construction of the article, resulting in a victory for what the article says is notionally to have happened over what in fact has happened. But it should be remembered that it may be a case falling within the *Holt v. Catterall* decision, i.e., where the meeting has refused to re-elect the retiring directors and done nothing to replace them. This, I suppose, might well happen if retiring directors unexpectedly fail to secure re-election and nobody has come to the meeting with other nominations prepared: in such a case it would be difficult, in view of *Holt v. Catterall*, to deny that the retiring directors must be deemed to have been re-elected. This position might arise under the 1929 Table A, cl. 76 of which deals with the matter thus: “The company at the general meeting at which a director retires . . . may fill up the vacated office by electing a person thereto, and in default the retiring director shall be deemed to have been re-elected unless at such meeting it is resolved not to fill up such vacated office.” It could be avoided by adding to the clause some such words as “or not to re-elect the retiring director.”

A CONVEYANCER'S DIARY

THE NATIONAL HEALTH SERVICE BILL—II

WE saw last week how it is proposed that the voluntary hospitals and their endowments shall be taken over by the Minister. I have seen it stated that the intended arrangements as to the endowments are defensible because cl. 6 provides that the Minister shall become responsible for all liabilities to which the governing bodies of voluntary hospitals are subject immediately before the appointed day. This seems a strangely inverted argument. Surely he is taking over the liabilities because he is getting the assets. Most of us would cheerfully take over the debts of a solvent friend if the corollary was that we should get also his assets. The real question is whether it is right that the surplus of the hospitals' assets, after discharge of all their liabilities, should be diverted to the Exchequer or should be applied to other suitable charitable uses. On that, I see no answer to the arguments used here last week.

The healing of the sick in hospitals having become the business of the State, there will remain the question what is to be done with those charitable assets which have hitherto been held on trusts directing their application for the support of hospitals, or on discretionary trusts, one object of which is the support of hospitals, such funds not being the endowments of any hospital within the meaning of the Bill. The answer is to be found in cl. 60, which is as follows:—

“(1) Where property, other than property transferred to the Minister or to the Board of Governors of a teaching hospital under section six or section seven of this Act, is held on trust immediately before the appointed day, and the terms of the trust instrument authorise or require the trustees, whether immediately or in the future, to apply any part of the capital or income of the trust property for the purposes of any hospital to which section six of this Act applies, the trust instrument shall be construed as authorising or, as the case may be, requiring the trustees to apply the trust property, to the like extent and at the like times, for the purpose of making payments, whether of capital or income—(a) in the case of a hospital designated as a teaching hospital or included in a group of hospitals so designated, to the Board of Governors of that teaching hospital; (b) in the case of any other hospital, to the Regional Hospital Board for the area in which the hospital is situated.

“(2) Any sums paid as aforesaid to any such Board shall, so far as practicable, be applied by them for the purposes specified in the trust instrument.”

The effect of cl. 60 seems to be that if a testator has left a sum for the maintenance of, say, a bed at the X hospital, the trustees must account for that sum to the Regional Hospital Board, who “shall so far as practicable” use it for the purpose of maintaining a bed at such hospital. No doubt some Regional Hospital Boards will find it “practicable,” i.e., convenient, to keep alive for a time the name of a testator by attaching it to a bed, but, apart from that very limited effect, the gift might just as well have been to the Exchequer outright. The Minister, out of funds provided by Parliament, will maintain the bed if it is needed, and he will refuse to maintain it if it is not needed, whatever the testator's dispositions. No doubt, if the trust is one in which the trustees have a discretion to apply the fund for other charitable purposes, they will usually exercise it by electing to support some useful and charitable object which would not be provided at all apart from their bounty and that of other like-minded people.

Rather optimistically, cl. 59 confers on Regional Hospital Boards and the Boards of Governors of the teaching hospitals power to “accept, hold and administer any property upon trust for purposes connected with hospital services.” It will be remembered that the phrase “hospital services” is defined by cl. 3 as meaning hospital accommodation and services which are to be maintained by the Minister “to such extent as he considers necessary to meet all reasonable requirements.” Property given to hospital boards under cl. 59 is apparently to be held by them on trusts, properly so called, and is not merely to be applied for the intended purposes “so far as practicable”: contrast cl. 7 (2) and cl. 60. Trusts created after the passing of this Act are, it seems to be suggested, more sacred than those created before the Act; it will be interesting to see how many testators and donors are prepared to rely on this distinction. If any do, cl. 59 (2) frees such gifts from Pt. II of the Mortmain Act, 1888.

Having regard to the provisions of this Bill, whether or not they eventually pass into law, the advisers of testators will no doubt consider seriously whether some general clause of defeasance should not be included in future charitable

dispositions, on some such lines as the following: "I declare that each of the gifts in clauses 2 and 3 of this my will and each of the other charitable gifts contained in any codicil hereto shall be held on trust for the charity designated herein or in any such codicil so long only as the charitable purpose in question is carried on otherwise than in pursuance of a duty laid upon any person under or by virtue of any enactment, in which event the said gift shall go over to some other charitable purpose designated by the trustees of this my will (or, if there are no trustees hereof at the material date, by the court then having jurisdiction over the funds of charities), subject in each case to the same provisions for defeasance as are contained in this clause and so that in no case shall any money or property subject to the trusts hereof be applied directly or indirectly in relief of central or local public funds except by way of ordinary taxation." Obviously this clause will need further adaptation and working out, but the whole future is before us.

The other main matter in the Bill which is of particular interest to practitioners in the law of property consists in the provisions for general medical services and the consequential provisions for the abolition of the sale of private medical practices and the compensation of owners of existing goodwill. Granted the principle of a State Medical Service, which is a matter outside the purview of the Conveyancer as such, the ancillary provisions seem fair and reasonable. They contrast markedly with those relating to hospital assets. I am assuming in the Government's favour that the figure of £66,000,000 as the total of the compensation is a fair estimate of a class of property which is almost impossible to value scientifically. The provisions which will repay particular study are all in cl. 35, which is a very long clause. The key is cl. 35 (2), which makes it a criminal offence to sell or buy the goodwill of a medical practice after the appointed day. The other provisions of the clause as to the civil effects of an attempted sale and as to partnership agreements show how difficult it is to define and constrain goodwill. They are a valiant attempt to do both, and it is a necessary attempt if the transaction is to be a criminal offence. But I am afraid that one could find

legal ways round quite easily if one gave one's mind to it. That is the measure of the draftsman's difficulties. I wonder whether it would not be better to enact, instead of cl. 35, quite a simple clause saying that it shall be a grave breach of professional etiquette to buy or sell the goodwill of a medical practice in any shape or form. Such an arrangement would assimilate the rule of the medical profession to that of the Bar, which gives no trouble in practice. Obviously the medical profession, who have, in fact, sunk large sums of money in the purchase and maintenance of goodwill, would have to be compensated for accepting the same rule; but compensation is conceded.

I am rather puzzled to know what the future status of medical practitioners is to be. They seem to be entitled to come into the scheme of the Act and to render general medical services, for which they will be paid by the State, and they are to be pensionable under cl. 63. But there seems to be nothing to stop those of us who can do so from paying our physicians to give us greater facilities than those provided for our less prosperous neighbours. There also seems to be nothing to stop the making of partnership agreements among practitioners so long as they do not infringe the provisions of cl. 35 as to goodwill. I venture to think that this transitional status, halfway between State servants and free professional men, will be an unhappy and uncomfortable one, and therefore one making for inefficiency.

One final point. All the persons and bodies who perform functions under this Act, from the Regional Hospital Boards to the general practitioner, will, in my opinion, be acting in pursuance of an Act of Parliament within s. 21 of the Limitation Act, 1939. It will thus be important for solicitors to bear in mind that the limitation period will be one year and not six. The individuals concerned will, of course, continue to be liable personally in tort, and cl. 13 gives to Regional Hospital Boards and the boards of teaching hospitals the right and liability to sue and be sued in their own names as principals in respect of all matters, including torts, arising in the exercise of their functions.

LANDLORD AND TENANT NOTEBOOK

THE FURNISHED HOUSES (RENT CONTROL) ACT, 1946. II—OPERATION

In last week's article I discussed the scope of the new Act, stressing a number of points which do not stand out very clearly. The *modus operandi* of the measure is more clearly stated and the contrast between it and the Increase of Rent, etc., Acts, 1920 to 1939, is striking. There is no standard rent to serve as a norm, though it is possible that some properties to be dealt with, namely, those in which a right to services is a feature of the agreement, may be controlled by the other Acts. What the statute does is to set up tribunals in districts where it is put into force, to which tribunals contracts conferring a right to occupy premises as residences may be "referred" by either party or by the local authority (s. 2 (1)). Apart from dismissing the reference, presumably on the ground that the alleged contract is outside the scope of the Act or on the ground that it is frivolous or vexatious (s. 2 (6)), the tribunal, after calling for information about the contract, may in ordinary cases do one of two things only: approve or reduce the existing rents (s. 2 (2)). But where the rent includes payment for services—which, as last week's article showed, are fairly widely defined—there is power to increase the figure on the ground that the cost of providing such has increased since 3rd September, 1939 (s. 2 (4)). And in any event, any party may make a later reference to the tribunal, for reconsideration of the rent they decided upon, on the ground of change of circumstances (s. 2 (3)).

The above outlines the powers of the tribunal and I will now say something about some of the actual words used. The power to demand information is described as follows: "they may by a notice in writing served on the lessor require him to give them . . . such information as they may reasonably require regarding such of the prescribed particulars

relating to the contract as are specified in the notice." This, and the rest of the Act, rather seems to assume that parties are always agreed about the terms of their contracts, apart from any question as to the legal effect of such terms. Fact-finding functions and powers to interpret contracts are not expressly given, but the tribunal, as it has to "consider the reference" and hear evidence or consider written representations is, we may take it, impliedly authorised to decide questions of fact and law. It is at all events significant that circular 70/46 of the Ministry of Health, sent to local authorities, and dated 3rd April, 1946, which asked them, *inter alia*, to bring to the Minister's attention the names of any persons they desired to suggest as chairmen or members of tribunals, at the same time asked them to state the qualifications (legal or otherwise) of those persons. But whether a tribunal can ask for particulars of a disputed contract seems a little arguable, and what may be reasonably required in the way of particulars is another question which may not prove easy to deal with.

Coming now to what the tribunal has to do when it has considered the contract, the operative words are "approve the rent payable under the contract or reduce it to such sum as they may, in all the circumstances, think reasonable" (s. 2 (2)). No doubt this will be found easier to apply than the "normal profit" and "extortionate profit" standards of the Increase of Rent, etc., Act, 1920, ss. 10 and 11 (limited to furnished lettings), and where an increase is sought on the ground of increased costs of services we again find that reasonableness is to guide determination: a rent higher by not more than such amount as they think reasonable in that respect (s. 2 (4)).

The power to reconsider is to be exercised on the same principles; but the Act does not say what "change of circumstances" will justify reconsideration. An explanatory memorandum (Memo. 300) issued by the Ministry of Health, helpfully suggests (para. 11) "e.g., an increase or reduction in the amount of the furniture or the services"; but, if that is what is envisaged, reconsideration of the rent hardly seems to be an appropriate expression, for there would be a new contract.

Any decision determining rent is to be entered in a register kept by the local authority which, by s. 3, is also to record the prescribed particulars with regard to the contract and a specification of the premises to which the contract relates. The prescribed particulars are, no doubt, the same as those which form the subject of the demand for information referred to earlier and the scope of which it is not easy to determine. If it is to include an inventory of furniture or description of services, the specification of the premises can, no doubt, be limited to what in a conveyance would be the Parcels.

As to sanctions, it is made illegal to require or receive on account of rent any payment in excess of the registered amount, or to any payment of any fine, premium or other like sum, or any consideration as a condition of the grant, renewal or continuance of a contract to which the Act applies, the amounts of any excess paid or value of any consideration given being made recoverable (s. 4), and the offender being liable, on summary conviction, to a maximum fine of £100 or imprisonment for six months, or both (s. 9 (1)). The wording is wide enough to make these provisions applicable to

agents. Section 4 does not prescribe any period of limitation, and no attempt has been made to modify the law laid down in *Mason, Herring & Brooks v. Harris* [1921] 1 K.B. 653 and *Remington v. Larchin* [1921] 3 K.B. 404, showing that it was lawful to require and receive a premium for the assignment of a contractual tenancy of controlled premises: and it is possible to assign a tenancy of premises let with furniture or services though, as will presently be pointed out, the security of tenure conferred falls far short of that enjoyed by tenants of unfurnished premises.

For, in the first place, that security is available only when a contract has been referred by lessee or local authority and, after it has been referred, but before it has been decided, or within three months after that, a notice to quit is served by the lessor on the lessee. This limitation occasioned a "question in the House" on 28th March, i.e., two days after the Act had become law and before any tribunals had been appointed, arising out of notices to quit alleged to have been given in a specified district. Also, there is no protection at all in the case of a tenancy for a fixed period, not uncommon in the case of furnished lettings.

Next, all that happens is that the notice is not to take effect before the expiration of three months from the decision, but the tribunal may direct, if it thinks fit, a shorter period. From which one gathers that while, as in the case of the Increase of Rent, etc., Acts, rent control is the primary object and security of tenure provisions merely ancillary, Parliament has not seen fit, when dealing with furnished premises, to take strong measures "to prevent properties from being 'withdrawn from circulation'".

TO-DAY AND YESTERDAY

April 29.—As a bencher of Gray's Inn Francis Bacon bestowed much attention on the laying out of the gardens, and on 29th April, 1600, he was allowed "for money disbursed about the garnishing and furnishing of the Walks, as by and upon his account there appeareth, the sum of £60.6.8."

April 30.—On 30th April, 1795, The Rev. William Jackson, convicted in Dublin of high treason in plotting a French invasion, was brought into court to receive judgment; he appeared exceedingly ill and a doctor who examined him in the dock pronounced him dying. He was ordered to be remanded, but in a few moments he expired where he lay.

May 1.—On the morrow, 1st May, an inquest was held on the body of Jackson, and the surgeons, having opened and examined it, pronounced that he had died in consequence of taking poison.

May 2.—William Juxon, who succeeded Laud as Bishop of London in 1630, was admitted to Gray's Inn on 2nd May, 1636, just after being appointed Lord High Treasurer of England. He attended Charles I on the scaffold and immediately afterwards was deprived of his bishopric. On the Restoration he became Archbishop of Canterbury.

May 3.—Early in 1816, Charles Abbott became a judge in the Common Pleas, but very soon Lord Eldon offered to transfer him to the far busier and more active sphere of the King's Bench. This was much against his inclination, for his ambitions were already satisfied and he was hoping to pass the rest of his life in comparative ease, while the change would involve no less than 400 extra hours' work a year. At first he pleaded anxiety about his eyesight, but he was pressed to consent and finally did so, taking his seat in the King's Bench on 3rd May, 1816. No one then foresaw that only two and a half years later he would enter it as Chief Justice, succeeding Lord Ellenborough and being ultimately raised to the peerage as Lord Tenterden. Some years later, recalling his acceptance of the transfer in 1816, he wrote that it showed that to do right was the greatest wisdom, even the greatest worldly wisdom. "It was right that I should remove into the King's Bench and I ought to have done so at the first proposal from the Lord Chancellor . . . I preferred my ease to the wish of the Chancellor . . . This I had no right to do, for I owed everything to him and his kindness. As soon as I removed I felt satisfied with myself, though I may truly say I did not by any means expect the consequence that I owed two and a half years afterwards. But if I had not removed into the King's Bench, I think it certain that I should not have been placed at the head of that court."

May 4.—On 4th May, 1601, the Gray's Inn benchers ordered that James Necton should be expelled from the Society and his chamber seized. He had not been in commons for two years, and though summoned to appear before the benchers he had refused, saying he would come to one of their chambers but not otherwise.

May 5.—In 1608 an order was made in Gray's Inn that any Reader who called more than four utter-barristers during his reading should pay £40 for each additional man. Soon after three members persuaded Henry Fleetwood, the next Reader, to exceed his proper number and call them by undertaking to indemnify him for the fine he would have to pay, each entering into a bond for £40. This raised a dreadful storm. On 5th May, 1609, their call was annulled and they were expelled "because they have dared insolently and corruptly . . . to lay so great a scandal upon the House as if the bar should be bought for money." The reader was subsequently fined.

NO DEPARTURE

One winter's day in 1911 Thomas Huston was missed from the village of Cappoquin, in County Waterford. It was known that he wanted to go to seek his fortune in the United States, and everyone thought he had taken one of the coal boats that put in at the River Blackwater, and expected him one day to reappear, perhaps a wealthy man. Now his skeleton, with crumbling bits of clothing, his rosary, his keys and his penknife, has been found in a dried up drain in a wood four miles from Cappoquin, but there is nothing to show how he met his death. The discovery recalls a tale which the late Maurice Healy told in his book on the Old Munster Circuit. A man, named Sheehan, who lived in the vicinity of Castletownroche, in County Cork, was courting a pretty girl named Brown, but his mother, sister and brother all depended on the little farm where they lived with him. It seems that in Irish country marriages the bride's dowry was devoted to providing for those other than the groom whom her arrival would turn out of the house, so that, as the girl was not rich, the Sheehan family opposed the match. Eventually, however, they agreed to an arrangement whereby they should all emigrate to New Zealand, the mother, brother and sister first and then the young couple. The farewell party was large and uproarious and the drink was so plentiful that the guests were not at all surprised to wake up next morning and find that the emigrants had gone early while they were asleep. They accepted the story without demur, and after Sheehan had lived on the farm for some time more and married his love, he set out for New Zealand with her. Years passed and there came a drought so

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(A.) = Admiralty

severe that long-forgotten wells had to be reopened. The occupant of Sheehan's farm explored one, and at the bottom of the deep shaft he found three skeletons, two female and one male, with fragments of clothing and personal property which proved them to be the relatives of his predecessor. They must have been called out one by one during the revels and felled in the darkness. Sheehan was traced to New Zealand, brought back to Ireland, tried and hanged.

KING'S COUNSEL

The new King's Counsel, who recently made their bows in the courts, have now neither perquisites nor duties, but it was not always so. Little more than a century ago they received an annual salary of £40, and also an allowance for pens, paper and red or purple bags. This was done away with from 1831. But down to 1886 they were regarded as owing service primarily

to the Crown. Before they could appear against the Crown a licence, which was given by a sign manual warrant, signed by the Sovereign, had to be obtained. The stamp duty was 10s. 6d. and this used to figure in the list of counsel's fees. After 1886 the licence was granted by the Home Secretary and the stamp duty was not exacted. It was not till 1920 that a general dispensation was granted. Mr. Justice Bray used to say that no junior could be sure of succeeding as a silk unless he had made at least £4,000 a year for three years. Despite this warning, the silk is no longer the rare bird that he was. Charles II only created seventeen, James II ten, William and Mary eleven, Anne ten, George II thirty, George III ninety-three, George IV twenty-six, and William IV sixty-five. The rate steadily increased, if one considers how long was the reign of George III and how short that of William IV, but the full tide of creations was not released till after the passing of the Serjeants.

REVIEW

The Effect of War on Contracts. By GEORGE J. WEBBER, LL.D., of the Middle Temple, barrister-at-law. With a Foreword by The Rt. Hon. Sir DAVID MAXWELL FYFE, K.C., M.P. Second Edition. 1946. London: The Solicitors' Law Stationery Society, Ltd. £3 17s. 6d. net.

Sir David Maxwell Fyfe, K.C., in a foreword to the second edition of this treatise mentions Mr. Webber's guiding principles to be "comprehensive treatment, the eliciting of the judicial process in reading the important decisions, and a worthy presentation of the relevant academic literature." He also observes that the work is essentially a practitioner's book. This observation is amply borne out by a perusal of the text and the index. The two great legal events of the war in the department of law with which the book deals were (1) the *Fibrosa* case [1943] A.C. 32, and the *Soufracht* decision [1943] A.C. 203. No fewer than fifty-three references to the former decision occur in the text, and a chapter of twenty-seven pages is devoted to its examination. Thirty-eight references and four pages are devoted to the latter case. These give the reader some inkling of the vast labour and thoroughness which have been employed to make this admirable volume. The achievement of the first volume was great; the second volume outclasses it in its vastness of scope and minuteness of analysis. There are two entirely new chapters on War: "Its Duration and Termination" and "Emergency Powers: Effect on Contracts." One of the most interesting matters recently raised in the courts and debated in the Lords is whether frustration can apply to a lease (*Cricklewood Property and Investment Trust, Ltd. v. Leighton's Investment Trust, Ltd.* [1945] A.C. 221). The clearest and most illuminating account of the argument, and of the different opinions of the learned law lords in that case and on that subject is to be found in this book. Written with unrivalled lucidity, it is an account to which practitioners will always wish to turn in order to ascertain the true position on this now vexed subject. This book is both a necessity and an adornment for every lawyer's bookshelf and desk.

POINTS IN PRACTICE

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Wife's Savings

Q. A and B, husband and wife, separated by mutual consent some thirty years ago. A has maintained B, and their only daughter C, by periodic payments, and continues to do so. By the exercise of considerable thrift, B has saved out of the money allowed her sufficient money to buy a house, and she has also accumulated other savings. B is desirous of making provision by will for her daughter C and wishes to be assured that A can make no claim to the property and savings after B's death. In view of the recent decision of the High Court, is there any possibility of A substantiating a claim to the property and savings after B's death, or should B transfer the property and savings to C during B's lifetime?

A. The Inheritance (Family Provision) Act, 1928, s. 1 (6), provides that the court may have regard . . . to the conduct of that defendant in relation to the testator. The decision in *Blackwell v. Blackwell* [1943] 2 All E.R. 579 was that, in the absence of any evidence of a gift by the husband, the wife's savings (from a housekeeping allowance made to the wife while the parties lived together) were the property of the husband. It is not considered that the husband, A, could substantiate a claim

to money saved by his wife, B, out of her separation allowance. Therefore no need exists for B to transfer the property to C during B's lifetime.

Whether a Self-Assent by an Executrix-Beneficiary is Essential

Q. A testator, who died in 1937, devised his real and personal estate to his wife absolutely, and appointed her sole executrix. Probate was granted to the wife, but she did not execute any assent vesting the property. The wife recently died intestate, and letters of administration have been granted to her estate. Can the administrator make a good title to the real property to a purchaser, and what recitals should be inserted in the conveyance?

A. This raises the rather vexed question of whether a self-assent in writing is essential in such a case. As it is not a question of the passage of a legal estate at all, but rather a change in the capacity in which a legal estate is held, it seems probable that a self-assent in writing is not necessary. If that be true then the administrator can make a good title. We suggest the deed should recite the will, death, and probate of the will of the testator; the intestate death of the wife and that long prior to her death she had entered into beneficial enjoyment of the property and was at the date of her death holding the same at law and in equity for her own use and benefit absolutely; the grant of administration; the agreement for sale, and that the administrator had not made any assent or conveyance in respect of or affecting a legal estate in the property.

ADJOURNED ANNUAL MEETING OF THE BAR

The adjourned annual meeting of the Bar was held on Monday, 15th April, in the New Hall, Lincoln's Inn, the Solicitor-General presiding, to consider the new draft constitution for the General Council of the Bar drawn up by the Joint Committee of members of the Council and other barristers, appointed at the annual general meeting of the Bar on the 1st February. The resolution approving the draft constitution, with or without modifications, in substitution for the existing regulations, and directing that it should come into force forthwith, was in the name of Mr. D. N. Pritt, K.C., M.P., and Sir Charles Doughty, K.C., the Chairman of the Council.

The Solicitor-General, opening the meeting, apologised for the absence of the Attorney-General, who, he said, was at that moment in the air on his way back to this country from abroad. A preface to the report in which the Joint Committee presented the new draft constitution of the Council set out the main alterations proposed, and recounted that the Committee and a drafting sub-committee which it appointed had held a number of meetings. The Committee had appointed Mr. Pritt chairman, and had thought it unnecessary to co-opt any additional members, as all interests and shades of opinion seemed to be well represented. The draft of the new regulations, it was explained in that preface, contained many major and minor innovations designed to carry out the desires expressed at the previous sessions of the annual general meeting.

The more important of those innovations were as follow: The objects of the Council had been more fully and widely expressed. After considering a number of proposals, the Committee had come to the conclusion unanimously that the best method of securing the changes desired was to preserve in the main the existing composition of the Council, with the exception of the ex-law officers and with the imposition of an age limit of seventy-two years, and to make full provision against anything in the nature of "plumping." It had sought to achieve that by giving each elector one vote for each vacancy to be filled, and by providing that each elector should exercise at least half his votes. A proposal to make organised written canvassing, carried on with the approval or consent of the candidate, a disqualification was rejected by a majority. The proposal that members of the Bar should pay annual subscriptions to the Council, to meet the expenses involved

in the additional activities which the new Council was expected to undertake, was considered. The proposal had taken the form of an insertion in the regulations of a discretionary power to the Council to collect subscriptions and impose minor sanctions. Finally, provision had been made for calling special general meetings on the requisition of forty barristers, and in many minor respects the regulations had been improved and the control of the Bar in general meeting over the Council had been strengthened.

Some twenty-eight amendments to the draft regulations had been put down which it was the task of the present meeting to consider, and some were of considerable importance. The Solicitor-General said that he thought that the best course would be not to put formally to the meeting the resolution approving the new constitution until after all the amendments had been discussed. A vote could then be taken on the resolution approving the new constitution as amended.

A motion by Mr. J. D. CASSWELL, K.C., to postpone the meeting on the ground that there had been too little time for members to consider the Joint Committee's report was withdrawn on the suggestion of the Solicitor-General, who pointed out that an adjournment would very probably occur in any event, as the amendments would not all receive consideration at that meeting.

The SOLICITOR-GENERAL having expressed the thanks of the Bar to the Joint Committee for the care and trouble taken in drafting the new constitution, Mr. Pritt, moving the resolution for the adoption of the new constitution, said that he thought that the draft regulations constituted a pretty good working document. The Joint Committee had been a very happy one, and had been unanimous on many important points.

SIR CHARLES DOUGHTY having seconded the resolution, which in accordance with the suggestion of the Solicitor-General was not then formally put to the meeting, the meeting proceeded to the task of considering the amendments. The first, moved by Mr. HAROLD CHRISTIE, K.C., in the absence of Mr. Charles Harman, K.C., was that the expression "the Chairman" in the regulations should not, as provided in the interpretation regulation, mean "the Chairman of the Bar" but the Chairman of the Bar Council. The proposed interpretation was, Mr. Christie said, in effect a proposal to substitute someone for the Attorney-General. The expression "Chairman of the Bar" was in any event meaningless.

It was explained on behalf of the Joint Committee that the appellation "Chairman of the Bar" had simply been devised as a good one for the functionary whom it was desired to create. The Attorney-General was the leader of the Bar, and his position would not be affected. Behind this suggestion of a new name was the Committee's desire that the Bar Council should be a bigger thing in the life of the profession than it had been. The Attorney-General had himself intimated that he had not the slightest objection to the proposed expression. The amendment was, however, carried by 130 votes to sixty-six.

A motion by Mr. J. YAHUDA that the objects of the Council should be amended to include "the furtherance of good relations between the Bar and lawyers of other countries" was adopted unanimously.

Considerable discussion arose on the amendment proposed by Mr. L. A. BLUNDELL that "The promotion and support of law reform" should be deleted from the proposed objects of the new Council. He thought that that object was already adequately catered for by the various bodies which existed for the promotion of law reform. That was a dangerous activity for the Bar Council to indulge in. Law reform was sometimes mixed up with political and even religious questions, as for example, in divorce matters. The Bar, Mr. Blundell thought, should steer clear of law reform.

Mr. GILBERT PAULL, K.C., opposing the amendment, pointed out that the regulations merely empowered the Council to *consider* such matters, and it must surely be in the interests of the profession that the Council should do that.

Mr. R. H. GLYN argued that for the Council to engage itself in the promotion of law reform might involve its sponsoring contentious matters, the consequence of which might, in an extreme case, even be to split the Bar.

Mr. REES-DAVIES opposed the amendment on the ground that for the Council to be concerned with law reform would be one way of protecting the right of audience now so seriously threatened with the creation of many new semi-judicial tribunals where that right was apparently to be denied to the Bar.

Mr. PRITT was of opinion that it would be disastrous if the Bar Council were debarred from considering questions of law reform.

The amendment was defeated by a large majority on a show of hands.

An amendment, moved by Mr. A. T. MACMILLAN, was similarly defeated, the effect of which was that the Law Officers of the Crown should not be *ex officio* members of the Council. Assuring the Solicitor-General that his amendment could have no possible personal reference to himself or the Attorney-General, Mr. Macmillan envisaged a difficult situation of divided loyalties for the law officers in a case where the Bar Council deemed it their duty to make strong representations to the Government on some proposed measure. He did not object to their membership of the Council as such. It should, however, he thought, be decided on whenever a new Council was elected, and should not be *ex officio*.

The remainder of the session was taken up with discussion of minor amendments, that of the remaining major amendments being deferred until the next adjourned meeting to be held on a date to be decided later.

NOTES OF CASES

COURT OF APPEAL

In re Bourne's Settlement; Bourne v. Mackay

Lord Greene, M.R., Morton and Tucker, L.JJ.

12th February, 1946

Settlement—Capital fund—Direction to accumulate income until beneficiaries attain twenty-three—Power to appoint accumulations to different class from those taking capital fund—Whether trust for raising portions—Period of accumulation—Death of settlor—Liability to estate duty—Law of Property Act, 1925 (15 Geo. 5, c. 20), s. 164 (1), (2).

Appeal from a decision of Evershed, J.

By a settlement made in 1932 a settlor transferred to trustees a fund of £7,000 upon trust for her seven named grandchildren, the eldest of whom was then under seven and the youngest only a few months old. As each grandchild became eighteen the trustees were to pay to him or her £52 a year. Subject to that the income of the capital fund was to be accumulated. The trustees were empowered, as each grandchild attained twenty-three, to pay over his or her share of the capital fund, together with £500 from the income fund. This was a mere power, and the trustees could continue to pay £52 a year to each grandchild. Both funds became distributable when the youngest grandchild became twenty-three. The income fund was then distributable between such of the grandchildren as should be living at the date of distribution and the children of any then deceased grandchildren in such shares as the trustees should appoint. The capital fund was distributable between the same class, except that the trustees could appoint to children of grandchildren, notwithstanding that their parents might be alive. The settlor died in 1941, and the Crown claimed that estate duty was payable under s. 1 of the Finance Act, 1894, as the settled property passed on her death. Evershed, J., gave judgment for the Crown on the ground that the trust for accumulation, not being a trust for raising portions within subs. (2) of s. 164 of the Law of Property Act, 1925, determined with the settlor's death. The grandchildren appealed.

LORD GREENE, M.R., said that the authorities came to this: that accumulations did not fall within the language of subs. (2) of s. 164 unless they were themselves as separate items used for the purpose of portions. That must not be merely by way of addition to a capital gift. The trustees could, if they chose, direct this income fund in such a way that the entirety of it would go to a beneficiary taking no interest at all in capital. If the settlement had so directed, he apprehended that that would have been a portion, because it would not have been a mere addition to capital. The settlement must be construed at its date. It was not possible then to say that the provisions therein contained might or might not be used for raising portions. The scope of subs. (2) was limited to transactions in respect of which it was possible to assert from their very nature that they possessed the specified quality. The next controversy arose under subs. (1), which laid down four alternative periods for which an accumulation might validly be made. The controversy was between paras. (a) and (d). The life of the settlor under para. (a) was the proper period. It followed that the property passed on the death of the settlor under the Finance Act, 1894. Appeal dismissed.

MORTON AND TUCKER, L.JJ., agreed.

COUNSEL: Pennycuik; Fawell; J. H. Stamp.

SOLICITORS: Biddle, Thorne, Welsford & Barnes; Solicitor of Inland Revenue.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

CHANCERY DIVISION

In re Lawes

Vaisey, J. 31st January, 1946

Family provision—Husband's application for maintenance—Obligations of wife—Inheritance (Family Provision) Act, 1938 (1 & 2 Geo. 6, c. 45), s. 1.

Adjourned summons.

The testatrix by her will bequeathed to her husband a legacy of £200 and furniture valued at £50. She gave the residue of her estate to the Society for the Prevention of Cruelty to Animals. She died in 1944 leaving an estate valued at £4,500. She was survived by her husband, whom she had married in 1915. There had been no children of the marriage. The testatrix had carried on the business of a nursing home. Her husband had been a park-keeper. In his spare time he had helped with the nursing home. The husband at the death of the testatrix was over seventy years of age. He had only a very small income of his own. In addition to his legacy under the will, he also received on the death of the testatrix £294 in respect of land vested jointly in himself and his wife. He was liable for £73 income tax in respect of his wife's business. He applied under the Inheritance (Family

Provision) Act, 1938, asking that reasonable provision might be made for his maintenance out of his wife's estate.

VAISEY, J., said that there appeared to be no good reason why the testatrix had left all her estate to the Royal Society for the Prevention of Cruelty to Animals, admirable though that institution was. She had not realised the obligations which she had towards her husband, and he would direct payment to the husband of £1 a week out of the income of the estate until his death or remarriage.

COUNSEL: J. A. Reid; Russo; E. J. Bagshawe.

SOLICITORS: J. D. Langton & Passmore.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION

Gilbert v. McKay

Lord Goddard, C.J., Humphreys and Henn-Collins, JJ.
28th January, 1946

Metropolis—Road traffic—Cars for hire outside office—“Plying for hire”—Metropolitan Public Carriage Act, 1869 (32 & 33 Vict. c. 115), ss. 6, 7.

Case stated by a metropolitan magistrate sitting at Bow Street Police Court.

An information was preferred by a police sergeant against the appellant, alleging that he was the owner of a car, No. ABM 136, which was on 11th October, 1944, found plying for hire within the metropolitan police district, at 6 Rupert Street, London, W., and which was not licensed so to ply, contrary to s. 7 of the Metropolitan Public Carriage Act, 1869.

At the hearing of the information, the following facts, among others, were established: Car ABM 136, owned by the appellant car-owner, was not licensed to ply for hire under s. 6 of the Act of 1869. The car-owner carried on at 6 Rupert Street a business, called the Langham Car Hire Service, for the purposes of which he used several cars owned by him. Anyone coming to the office, asking for a car, and paying the required sum was at once provided with a car and driver and driven away. The car-owner's premises consisted of a small ground-floor office, advertised by two illuminated signs reading “Langham Car Hire,” and “Cars for Hire.” On the night in question six saloon cars belonging to the appellant car-owner were standing on a rank in Rupert Street near the office. One Cos entered the office, asked the clerk to be driven to an address in London, paid 12s. 6d. for the journey, which would have cost 1s. by taxi, and, a slip of paper having been made out and handed to the driver, entered car ABM 136 and was driven away, after telling the police sergeant, in answer to a question, that he had come to that place for a car because he had seen the illuminated sign. The car in which Cos left had been driven forward and left by the driver some five minutes before, taking the place of another car which had been hired. The driver was not in or near the car when Cos arrived at the office. It was contended for the car-owner, *inter alia*, (1) that the only material fact proved was that he had publicly advertised that he had cars for hire, which disclosed no offence; that the hiring of the car by Cos was not the result of any plying for hire, and was in law and in fact a private hiring; and that the facts that the contract of hire had been made without reference to car No. ABM 136, and that the hirer was free to allocate any car to the contract, showed that no offence had been committed. It was contended for the police sergeant that the car was plying for hire and that the case was indistinguishable from *Foinett v. Clark*. (1877), 41 J.P. 359. The magistrate was of opinion that the car was plying for hire, there being a solicitation of the public by means of the signs and the exhibition of the cars themselves near the signs. The car-owner appealed.

LORD GODDARD, C.J., said that, in all such cases, whether a car was plying for hire was essentially a question of fact to be decided to a great extent by common-sense. In this particular case there was without doubt a plying for hire. The cars were being left outside the office to be hired exactly like taxi-cabs on an ordinary hackney carriage stand in the street. Channel, J., said in *Cavill v. Amos* (64 J.P. 309): “In ordinary cases in order that there should be a plying for hire the carriage itself should be exhibited.” There could be a plying for hire where it was not exhibited, but if there was exhibition that was a most important fact. He (his lordship) expressed no opinion whether it was a necessary conclusion that if the cars had been concealed in a private yard or garage the result would be the same provided that the cars were ready to be appropriated to an immediate hiring, as the magistrate had said.

HUMPHREYS and HENN-COLLINS, JJ., agreed.

COUNSEL: Geoffrey Howard; Gattie.

SOLICITORS: H. R. Hodder & Son; Solicitor for Metropolitan Police.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Stacey v. Wilkins; Bromham & Others v. Same

Lord Goddard, C.J., Humphreys and Henn-Collins, JJ.

28th January, 1946

Betting and lotteries—Unlawful lottery—Lawful lottery unlawfully conducted—Names and addresses of promoters to be stated on tickets—Committee stated as promoters—Whether sufficient compliance—Betting and Lotteries Act, 1934 (24 & 25 Geo. 5, c. 58), ss. 22, 24.

Case stated by Glamorganshire justices.

A lottery was promoted by the Sports and Entertainment Committee of the British Legion, Briton Ferry Branch, in aid of their benevolent fund. The committee, or some members of the committee, employed the appellant, Stacey, a printer, to print tickets for that lottery. An information was preferred against him, alleging that “in connection with” that lottery he “unlawfully did print certain tickets for use in” it “contrary to s. 22 of the Betting and Lotteries Act, 1934.” He was convicted and fined £10, and now appealed. The facts relating more particularly to the alleged contraventions of the other appellants, who were also charged under s. 22, are not material to this report. By s. 21 of the Betting and Lotteries Act, 1934, all lotteries are declared unlawful, subject to the provisions of the Act. By s. 22 (1) (a), it is an offence to print tickets in connection with a lottery, but, by s. 22 (2), it is a defence to a charge under s. 22 (1) for a printer to prove that the lottery in question was such as is declared by a subsequent section not to be unlawful and that he believed, on reasonable grounds, that none of the conditions laid down by that subsequent section had been broken. By s. 24 (2), a private lottery is deemed not to be an unlawful lottery, but a condition to be observed in promoting it is that “every ticket shall bear upon the face of it the names and addresses of each of the promoters . . .”

LORD GODDARD, C.J., said that the facts showed clearly that this was a private lottery. The Act of 1934 was intended to make it possible for those responsible for enforcing the Act to see who were the actual promoters of the lotteries which the Act made legal, so that, if any question arose, they should know whom to summon. A statement on tickets that the promoters of a lottery were a committee was not a sufficient compliance with s. 24 (2). If the promoters were a corporate body, for example, a company, no doubt it would be enough to state on the tickets the name of that body. But, where a committee were concerned, it could only be the members who were the promoters, and so their names and addresses must appear on the tickets. The difficulty remained, however, that this printer had been charged under s. 22 (1), and that s. 22 (2) made it a defence to that charge to show that the lottery was not unlawful. This was a lawful lottery. The printer might have been charged under s. 24 (3) in respect of a breach of the conditions laid down in s. 24 (2), but he clearly had committed no offence under s. 22 (1). The confusion had arisen because it had not been borne in mind that if the lottery was a private one it was not unlawful, and that it did not cease to be a lawful lottery because one of the conditions prescribed for lawful lotteries had been broken. The offence committed here was that of conducting a lawful lottery in an unlawful manner contrary to s. 24, whereas the printer had been wrongly charged under s. 22. The appeal must be allowed.

HUMPHREYS, J., gave judgment agreeing.

HENN-COLLINS, J., agreed.

On the ground that the charges had been wrongly preferred under s. 22, counsel for the informant did not attempt to support the convictions of the other appellants, and accordingly all the appeals were allowed.

COUNSEL: Gattie; G. R. F. Morris; Sutton, K.C., and D. Morgan Evans.

SOLICITORS: Sharpe, Pritchard & Co., for T. D. Windsor Williams, Neath; Arnold Carter & Co., for Harold L. Roberts, Briton Ferry; Torr & Co., for Richard John, Cardiff.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY

Johnson v. Johnson

Lord Merriman, P., and Willmer, J. 26th February, 1946
Husband and wife—Separation agreement—Weekly payments—Deductions for income tax—“Wilful neglect” to maintain.
Appeal from a decision of the Metropolitan magistrate sitting at North London Police Court.

In February, 1935, a husband and wife entered into a separation agreement under which the husband undertook to pay the wife 30s. a week. No reference was made to income tax. In August, 1945, the husband, realising that he had throughout never deducted from the payments to his wife income tax as he was entitled to do under r. 19 of the General Rules applicable to All Schedules to the Income Tax Act, 1918, proposed, by way

of adjusting the matter for the current financial year, to pay the wife nothing for the next four months in order to repay himself for the deductions which he had failed to make in the first four months of that year, and thereafter to resume payments subject to deduction of tax. The wife accordingly took out a summons against the husband, alleging wilful neglect to maintain her, and the magistrate made an order in her favour for payments of 40s. a week, reduced by consent to 30s. a week at the hearing of this appeal by the husband.

LORD MERRIMAN, P., said that, even if the husband's rights were as he maintained, he (his lordship) would hesitate to hold it reasonable to leave the wife quite without maintenance for four months. On any view of the matter, the magistrate would at least be entitled to direct, if the husband were entitled to make the deductions which he claimed to make, that those deductions in respect of past payments in full should be spread over the remaining eight months of the financial year and even longer. The magistrate was entitled, in addition to his right to go behind a separation agreement in a proper case, to go behind the legal principles, in particular the income-tax principles, according to which the agreement was to be implemented. The husband's claim to deduct tax in respect of payments made in the past in full was based on a passage in the judgment of Slesser, L.J., in *Taylor v. Taylor* [1938] 2 K.B. 320, at p. 333; 81 Sol. J. 587. Read by itself, that passage might be read as conferring such a right; but read in the light of the rest of the judgment and of the decision of the court it could not be so construed. In *Taylor v. Taylor*, *supra*, the reason why the court had allowed deduction for tax to be made on the amount withheld by the husband (by way of impermissible deduction of tax on past payments made in full) for several financial years before the date of the writ was that, throughout that period, he had deliberately been making a deduction, albeit an impermissible one, from each payment. He could not therefore be treated as having made the payments in full and as having thereby lost his right to deduct. Accordingly, *Taylor v. Taylor*, *supra*, was no authority for the husband's claim in the present case to deduct tax subsequently in respect of weekly payments made in full earlier in the financial year. Indeed it was a direct authority to the contrary. The appeal must be allowed.

COUNSEL: *Gillis*; *King Anningson*.

SOLICITORS: *W. R. Perkins, for Hamilton-Hill & Evershed, Leyton*; *C. V. Young & Cowper*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

OBITUARY

HIS HON. H. G. FARRANT

His Honour Henry Gatchell Farrant, formerly Judge of Circuit 35 (Cambridgeshire), died on Tuesday, 16th April, aged eighty-two. He was educated at Repton and New College, Oxford, and was called by the Inner Temple in 1890. He was appointed to the Bench in 1918 and retired in 1937.

PARLIAMENTARY NEWS

ROYAL ASSENT

The following Bills received the Royal Assent on 15th April:—

INVERNESS WATER PROVISIONAL ORDER CONFIRMATION
LONDON NECROPOLIS
METROPOLITAN WATER BOARD
PATENTS AND DESIGNS
POLICE
UNITED NATIONS

and the following Bills on 18th April:—

ACQUISITION OF LAND (AUTHORISATION PROCEDURE).
ARMY AND AIR FORCE (ANNUAL)
HOUSING (FINANCIAL AND MISCELLANEOUS PROVISIONS)

HOUSE OF LORDS

Read First Time:—

GAS LIGHT AND COKE COMPANY BILL [H.L.] 16th April.
GREAT WESTERN RAILWAY BILL [H.C.] 15th April.

Read Second Time:—

NEWPORT (ISLE OF WIGHT) CORPORATION BILL [H.C.] 17th April.

Read Third Time:—

EDUCATION BILL [H.C.] 15th April.
MID AND SOUTH-EAST CHESHIRE WATER BOARD BILL [H.L.] 16th April.

HOUSE OF COMMONS

Read First Time:—

CABLE AND WIRELESS BILL [H.C.]
To bring the share capital of Cable and Wireless, Ltd., into

public ownership, and to provide for the cost of making certain payments to that company in connection with reductions in its charges. 18th April.

FINANCE (No. 2) BILL [H.C.] 17th April.

NEW TOWNS BILL [H.C.]

To provide for the creation of new towns by means of development corporations, and for purposes connected therewith. 17th April.

RAILWAYS (VALUATION FOR RATING) BILL [H.C.]

To amend the Railways (Valuation for Rating) Act, 1930. 16th April.

Read Second Time:—

POST OFFICE AND TELEGRAPH (MONEY) BILL [H.C.]

12th April.

QUESTIONS TO MINISTERS

SOLDIERS' WILLS

Sir G. JEFFREYS asked the Secretary of State for War whether he is aware that the Principal Probate Registry has recently laid down that soldiers' wills cannot be admitted as privileged until evidence is furnished to show that at the date they were made the testator was serving in a theatre of war, or was under orders to proceed to a theatre of war; and whether, in these circumstances, he will arrange for the revision of the will forms which are supplied to soldiers, and which, in the light of this ruling, no longer fulfil the exact purpose for which they were intended.

Mr. LAWSON: I am in communication with my legal advisers on this subject. I can assure the hon. and gallant member that the instructions given to soldiers on their pay books will be revised if this is considered necessary. 16th April.

REGISTRATION OF LAND CHARGES

Mr. CHALLEN asked the Attorney-General the meaning of Statutory Rule and Order, No. 414/L.6, of 1946 [*ante*, p. 165].

The ATTORNEY-GENERAL: The object of the rule to which the hon. and gallant member refers is to make provision for the registration as a local land charge under s. 8 of the Building Materials and Housing Act, 1945, of conditions imposed by that Act on the price or rent chargeable on transfer of a house for which a building licence has been granted. 12th April.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1946

- No. 514. **Allens** (Registration in Hotels) Regulations. April 8.
- No. 511. **Czecho-Slovakia**. Settlement of Financial Claims. April 8.
- No. 518. **Electricity Commissioners** Special Orders, etc., Rules, 1930, Relaxation (Revocation) Order. April 8.
- No. 530. **Essential Work** (De-Scheduling) Order. April 11.
- No. 493. **Import Duties** (Drawback) (No. 1) Order. April 8.
- No. 463. **Malayan Union** Order in Council. March 27.
- No. 459. **Open General Export Licence**, March 29, granted by Board of Trade in respect of goods sent by parcel post.
- No. 464. **Singapore Colony** Order in Council. March 27.
- No. 462. **Straits Settlement** (Repeal) Order in Council. March 27.
- No. 503. **Superannuation** (Allocation of Pension) Rules. April 5.
- No. 527/S.16. **Town and Country Planning (Scotland) Act, 1945**, Compulsory Purchase (Appointed Day) Order. April 8.
- No. 528/S.17. **Town and Country Planning (Scotland) Act, 1945**, Compulsory Purchase (Contemporaneous Procedure) Regulations. April 8.
- No. 529. **Trading with the Enemy** (Specified Persons) (Amendment) (No. 15). April 10.

STATIONERY OFFICE

List of Statutory Rules and Orders, issued during March, 1946. [Any of the above may be obtained from the Publishing Department. S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2]

Honours and Appointments

The Lord Chancellor has appointed Mr. ARTHUR HENRY ARMSTRONG to be a Judge of County Courts with effect from 20th April, 1946, and has made the following alterations in the County Court Circuits:—

Judge ANDREW, M.B.E., to be one of the Judges on Circuit No. 58 (Ilford, Southend, etc.);

Judge ARMSTRONG to be one of the Judges on Circuit No. 38 (Edmonton, etc.). Judge Armstrong will also sit at courts on other Circuits in London and the Home Counties where additional assistance may be required.

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